

CITY OF CHARLOTTESVILLE

"A World Class City"

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November 30, 2017

Brown, Edwards & Company, LLP
124 Newman Avenue
Harrisonburg, Virginia 22801

Confidential & Privileged

RE: City of Charlottesville - Request for Audit Information
Fiscal Year Ending June 30, 2017

Dear Sir or Madam:

By letter to me from Christopher Cullinan, the City's Director of Finance, dated July 14, 2017, received by me on July 17, 2017, our office was asked to identify certain pending or threatened litigation, and certain unasserted claims and assessments, which would relate to your audit. He asked that our response cover material matters as to which our office has been engaged or to which we have devoted substantive attention on behalf of the City in the form of legal consultation or representation. He also asked that our response include matters that existed on June 30, 2017, and those matters arising between that date and the date of our response.

The essence of Mr. Cullinan's request is that we identify "material matters" (items involving amounts exceeding \$100,000 individually or items involving lesser amounts which exceed \$100,000 in the aggregate). This direction is intended to eliminate suits and claims that are so small that they are extremely unlikely to have any adverse effect on the City's fiscal integrity. Given the City's existing general liability insurance coverage¹, and the legal and factual exigencies of each lawsuit, we doubt that any one pending suit is likely to have a substantial adverse effect on the City's fiscal integrity. However, to be conservative and consistent with your \$100,000 definition of materiality, we will report almost every lawsuit against the City that seeks monetary damages. We will omit what we consider at this time to be very minor or frivolous claims that have yet to become lawsuits. In accord with the instructions, definitions, and descriptions contained in Mr. Cullinan's letter and for the time period delineated above, we respond as follows:

¹ The City is insured under the VML Insurance Programs for general liability, police enforcement activities, and public officials errors and omissions coverage in the amount of \$1,000,000 per occurrence plus a \$10,000,000 umbrella policy, with no deductible.

Reporting Date: November 30, 2017
PENDING OR THREATENED LITIGATION
(excluding unasserted claims and assessments)

A. SUITS FILED

1. Charlottesville Parking Center, Inc. v. City of Charlottesville

Charlottesville Parking Center, Inc. ("CPC") and the City of Charlottesville each owns parking spaces in the Water Street Parking Garage. The Garage is managed by a condominium association Board of Directors, with Board members appointed by CPC and the City. In March 2016 CPC filed suit against the City in Charlottesville Circuit Court, alleging that in December 2015 the City had improperly refused to raise the garage parking rates to a level CPC considered to be market rate. In the lawsuit CPC sought \$1,000,000 in damages, and an injunction against the City's participation in the management of the Garage. A second action was filed by CPC in June 2016, seeking the appointment of an emergency receiver to operate the Garage. The Court granted the City's Demurrer and dismissed the second lawsuit, and CPC did not appeal.

As of this date CPC has not pursued their initial lawsuit that was filed in March. In my opinion the basis for the Court's ruling in the second lawsuit (that the parties are not obligated to set parking rates at fair market rates) precludes CPC from prevailing on their initial claim. With the assistance of outside counsel the City will vigorously oppose CPC's lawsuit, and in my opinion will be successful in defending the claim.

2. Joseph Draego v. City of Charlottesville

Joseph Draego filed suit against the City in the U.S. District Court (Western Division) on July 28, 2016, alleging the City violated his First and Fourteenth Amendment rights when they limited his speech at a City Council meeting on June 20, 2016. At that meeting Mr. Draego was ruled out of order and escorted from the Council chambers due to his inflammatory remarks about Muslims and their faith, comments that were in violation of City Council rules which prohibited disruptive defamatory attacks on individuals or groups. VML Insurance was notified of the lawsuit and hired the Conrad Law Firm as defense counsel. The parties reached a financial settlement that was paid by VML Insurance, and a Consent Order of Dismissal was entered on December 21, 2016.

3. Tarsha Gerald v. Morgan Minor, et al. D/I: July 13, 2016

Tarsha Gerald filed a lawsuit, *pro se*, in U.S. District Court (Western Division) on September 7, 2016 against Morgan Minor, a social worker employed by the City of Charlottesville, as well as other City social workers and police officers, alleging violation of her constitutional rights. The City Department of Social Services (CDSS) had removed her children from her custody on July 18, 2016 on the basis of neglect (she was homeless). VML Insurance hired Zunka, Milnor & Carter as defense counsel, and a response was timely filed. The Court granted Ms. Gerald's request to dismiss the action without prejudice by Order entered November 23, 2016. As of this writing Ms. Gerald has not re-filed her action.

4. Dickerson Homes and Development LLC v. City Planning Commission, et al.

Dickerson Homes filed suit in the Charlottesville Circuit Court on June 10, 2016 against the City, its Planning Commission, and the Director of Neighborhood Development Services because in April 2016 the Planning Commission denied approval of Dickerson's site plan for a proposed development. The suit also alleges that the site plan denial was a violation of Dickerson's due process rights, and requests an unspecified amount of damages. The Complaint was served on the City on October 6, 2016. VML Insurance appointed the law firm of Zunka, Milnor & Carter as defense counsel for the City, and they filed a demurrer seeking a dismissal of the action. To date Dickerson has not taken any action to pursue this case. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

5. Gene Everette Washington v. J.P. Mooney, et al. (City Police).

Gene Everette Washington was arrested on capital murder charges and is awaiting trial. Washington filed a federal lawsuit, *pro se*, on November 16, 2015, alleging emotional distress and public humiliation because of his arrest, naming several City police officers, the former Chief of Police (Timothy Longo), and the Clerk of the Charlottesville Circuit Court, Llezelle Dugger. VML Insurance was notified, and hired the law firm of Zunka, Milnor and Carter to act as defense counsel. The District Court granted the City's Motion to Dismiss, and the Plaintiff appealed the dismissal to the United States Court of Appeals for the Fourth Circuit. On May 17, 2017 the Fourth Circuit affirmed the District Court's dismissal of the action, and no further appeal has been filed by the Plaintiff.

6. Tracy Franklin v. City of Charlottesville D/I: July 25, 2015

Tracy Franklin allegedly suffered personal injury as a passenger on a City Transit bus on July 25, 2015 when the bus suddenly accelerated before he reached a seat. The Notice of Claim was received December 14, 2015 and sent to Virginia Transit Liability Pool (VTLP). Mr. Franklin filed suit on July 7, 2017 in Charlottesville Circuit Court asking for \$250,000.00 in damages. The law firm of Zunka, Milnor and Carter was hired by VTLP to act as defense counsel. An

Answer was timely filed, and a Motion to Dismiss the case was filed on August 7, 2017. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

7. Braulio Maldonado (minor) through his guardian Lucero N. Maldonado Alcazar. D/I: August 14, 2014

Braulio Maldonado, a minor, was attending a farmer's market event at the University of Virginia on August 14, 2014 when a tree limb fell and struck him. The event was organized by University of Virginia staff and was not sponsored in any way by the City. The law firm of Zunka, Milnor and Carter was hired as defense counsel, and a Motion to Drop the City as a Defendant was granted by the Court. The claims against the City were dismissed with prejudice by Order entered October 5, 2017.

8. Renae Long v. Albemarle-Charlottesville Regional Jail, City of Charlottesville, and County of Albemarle.

Renae L. Long was incarcerated at the Albemarle-Charlottesville Regional Jail and on June 26, 2017 filed a Warrant in Debt against the City for \$20,000 alleging "deliberate indifference" by Jail staff which caused her "permanent harm." The case was referred to VML Insurance and the law firm of Zunka, Milnor and Carter was hired as defense counsel. A Motion for Summary Judgment was filed on October 3, 2017 on behalf of the City, on the basis that the Regional Jail Authority is responsible for the operation of the Jail, and not the City of Charlottesville. The case was non-suited by the Court on October 16, 2017.

9. Water Street Leasing, LLC v. Jeffrey S. Davis as City Assessor

Water Street Leasing, LLC filed suit in Charlottesville Circuit Court seeking a Writ of Mandamus to compel the City Assessor (Jeffrey S. Davis) to perform real estate tax assessments on certain property (parking units) in the Water Street Parking Garage under lease to Water Street Leasing, LLC. After a hearing on June 26, 2017, the Court entered a Final Order denying the Writ of Mandamus on September 26, 2017.

10. Frederick W. Payne, et al. v. City of Charlottesville

Nine individuals and two organizations filed suit in Charlottesville Circuit Court against the City of Charlottesville, the members of the Charlottesville City Council, and the City Manager after the City Council passed a Resolution directing the removal of the statue of Robert E. Lee from a downtown City park. The basis of the lawsuit is a state law that prevents the disturbance or removal of certain war memorials or memorials to war veterans. VML Insurance has appointed defense counsel to assist in the defense of the suit. In an October 2017 ruling the Court dismissed the Plaintiffs' claim for monetary relief since there was no allegation of damage to the statue. The Court did, however, issue a preliminary injunction against the

removal of the statue after finding that the Plaintiffs are likely to prevail on their claim for permanent injunctive relief. No trial date has been set, and while Plaintiffs may prevail on their claim for injunctive relief it does not appear that they have a claim for money damages.

11. Robert Sanchez Turner v. Al Thomas, Jr. and City of Charlottesville. D/I: August 12, 2017

Robert Sanchez Turner filed suit in the United State District Court for the Western District of Virginia on August 31, 2017 against City Police Chief Al Thomas, Jr., the City of Charlottesville and W. Steven Flaherty, Virginia State Police Superintendent, alleging personal injury due to inaction of police officers at the Unite the Right rally on August 12, 2017 in the City's downtown area. Plaintiff is seeking unspecified monetary damages, punitive damages, attorney fees and expenses. VML Insurance was notified and hired the law firm of Zunka, Milnor and Carter as defense counsel. The City has filed a Motion to Dismiss the action for failure to state a claim, but a hearing date has not been set. In my opinion the City has valid defenses to liability in this action, and if there is a judgment or settlement of the claims against the City it will not exceed the limits of the City's insurance coverage.

The violence and disorders during the "Unite the Right" rally on August 12, 2017 resulted in one fatality and injuries to numerous individuals. There is certainly a possibility of additional claims or lawsuits against the City and its officials in the future, but to date the Turner lawsuit is the only action that has been filed against the City, and we have received no other notices of claims.

12. Natalie Jacobsen and Jackson Landers v. City of Charlottesville, Department of State Police, and Virginia Secretary of Public Safety and Homeland Security

In November 2017 the above-named Petitioners filed a Petition for Writ of Mandamus in Charlottesville Circuit Court alleging that Defendants had not complied with the Virginia Freedom of Information Act, Virginia Code Sec. 2.2-3700, et seq. with respect to requests for public records related to the August 12, 2017 Unite the Right rally held in Charlottesville. The City believes that the records requested by the Plaintiffs are exempt from disclosure under FOIA. VML Insurance hired the law firm of Zunka, Milnor and Carter as defense counsel for the City. Since the Plaintiffs are only seeking a writ of mandamus, attorney fees and costs, any adverse judgment will not exceed the limits of the City's insurance coverage.

13. Joanie Raskin v. City of Charlottesville. D/I: September 2, 2015

Joanie Raskin slipped and fell on September 2, 2015 in a City-owned swimming pool building (Smith Aquatic Center) and injured her arm. A notice of claim was received in 2015 and forwarded to VML Insurance for investigation. Plaintiff's attorney filed suit in August 2017, but withheld service of process. By letter dated November 6, 2017 a \$50,000 settlement was offered by the Plaintiff, which was forwarded to VML Insurance. In my opinion, any settlement or adverse judgment will not exceed the limits of the City's insurance coverage.

The ongoing defense of many of these suits is being handled by outside counsel, who we have identified. Those attorneys can recite more details about the amount of exposure, if any, these suits carry for the City.

B. CLAIMS ONLY

Minor, Jennifer, on behalf of minor child, Shanesa Minor. D/I: June 25, 2015

Jennifer Minor, mother of a 13 year old girl, sent a Notice of Claim dated September 25, 2015 to the City alleging severe injuries to her daughter on June 25, 2015, when a Police K-9 dog attacked her at a crime scene where she was a bystander. The child was bitten multiple times, and was taken to the hospital for treatment. The claim was referred to VML Insurance on September 30, 2015 and negotiations for settlement are in progress. At this point, under the facts that are known, there appears to be a significant likelihood of City liability in this case. In my opinion, however, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Phillip Turner. D/I: May 26, 2016

Phillip Turner, a city Transit Division employee, filed an OSHA claim against the City for retaliation (discrimination). VML Insurance was notified and they retained Zunka, Milnor & Carter (Elizabeth Southall, Esq.) to represent the City. Ms. Southall filed a position statement on behalf of the City, and the City is currently awaiting a response from OSHA. In my opinion there are valid defenses to this claim, and any settlement or judgment will not exceed the limits of the City's insurance coverage.

Robert H. Downer, Jr. D/I: April 24, 2017

Judge Robert Downer filed a notice of claim dated October 20, 2017 for an injury he sustained from an alleged sidewalk hazard on April 24, 2017 at the intersection of Belmont Avenue and Meridian Street. The claim letter was sent to VML Insurance for investigation and possible settlement. In my opinion, however, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Damien Woodfolk. D/I: February 23, 2017

Damien Woodfolk was a passenger in a vehicle that was struck by a police vehicle driven by Police Officer James Fink. Mr. Woodfolk alleges that Officer Fink failed to yield the right of

way, thereby causing an accident that resulted in bodily injury to Mr. Woodfolk. A Notice of Claim dated July 24, 2017 was received and forwarded to VML Insurance for investigation. While the extent of Mr. Woodfolk's injuries is unknown at this time, we do not believe any potential City liability will exceed the limits of the City's insurance coverage.

Townsquare Associates. D/I: June 29, 2017

Townsquare Associates, LLC, the owner of property at 609 East Market Street, notified the City by letter dated July 25, 2017 that "during road repairs and improvements and possibly utility repairs and improvements" employees or contractors of the City damaged their building. No further communication has been received and the extent of the alleged loss is unknown. The City Department of Public Works is unaware of any damage to the building from City operations.

Pamela Irving. D/I: April 25, 2017

Pamela Irving was a passenger on a Greyhound bus on April 25, 2017 when a City school bus allegedly struck the Greyhound bus while it was stopped at an intersection. Ms. Irving allegedly sustained injuries and filed a Notice of Claim dated July 11, 2017. VML Insurance has been notified, and while the extent of Ms. Irving's injuries is unknown at this time, we do not believe any potential City liability will exceed the limits of the City's insurance coverage.

Ronna Gary. D/I: November 18, 2016

The City received a Notice of Claim dated May 11, 2017 from attorneys representing Ronna Gary who alleges that she was sexually assaulted by a City police officer, Christopher Seymore, while he was on duty. Officer Seymore was subsequently charged with two counts of forcible sodomy, and was terminated as an employee of the Police Department. This potential claim was referred to VML Insurance for investigation. Although the nature of this claim is very serious, we do not believe any potential liability will exceed the limits of the City's insurance coverage.

Angela Ayres. D/I: January 5, 2017

Angela Ayres is employed by the City as a transit bus driver. On January 5, 2017 Ms. Ayres was driving a City vehicle when she was involved in a motor vehicle collision with another vehicle, driven by an unknown person who fled the accident scene. Ms. Ayres suffered personal injury as a result of the accident, and has filed an Uninsured Motorist claim by letter dated February 13, 2017.

Pursuant to Mr. Cullinan's request, by this letter I confirm his representation to you that there are no unasserted claims and assessments that I consider probable of assertion and, if asserted, to have at least a reasonable possibility of an unfavorable outcome.

The information set forth herein is current as of the date of this letter, except as otherwise noted, and we disclaim any undertaking to advise you of changes which thereafter may be brought to our attention. The City Attorney's Office is a department of City government and represents the City as a municipal corporation. No fees for legal services or expenses are charged to the City of Charlottesville.

This response is limited by and is to be construed in accordance with the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December, 1975). Without limiting the generality of the foregoing, this response is limited to matters which have been given substantive attention by our office in the form of legal consultation and, where appropriate, legal representation, for the time period covered by this letter.

This response is solely for your information in connection with your audit of the financial condition of the City and is not to be quoted or otherwise referred to in any financial statement or other document, in whole or in part, or furnished to any other party or agency without our prior written consent. Notwithstanding such limitation, this response may be properly furnished to others in compliance with court process or when necessary in order to defend you against a challenge of the audit by the City or a regulatory agency, provided that we are given written notice of the circumstances at least twenty days before the response is to be furnished to others, or as long in advance as possible if the situation does not permit such period of notice.

Pursuant to Mr. Cullinan's request, we wish to confirm as correct our understanding that whenever, in the course of performing legal services for the City, any attorney in this office forms a professional conclusion that the City must disclose or consider disclosing an unasserted possible claim or assessment, we will so advise the City Manager and Director of Finance and will consult with them concerning the question of such disclosure and the applicable requirements of the Statement of Financial Accounting Standards No. 5 of the AICPA Professional Standards.

Please feel free to contact me if there are any questions regarding the contents of this letter, or if any additional information is needed.

Sincerely yours,


S. Craig Brown
City Attorney

cc: Maurice Jones
Chris Cullinan
City Council